

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHERYL BEAN,

Defendant-Appellant.

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UNPUBLISHED

May 26, 2009

No. 285140

Oakland Circuit Court

LC No. 2007-218133-FC

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Defendant appeals by right her jury convictions of armed robbery, MCL 750.529, assault with intent to commit great bodily harm (AWGBH), MCL 750.84, and second-degree retail fraud, MCL 750.356d. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions stem from a theft at a retail store in Oak Park. A store security guard, Anthoney Reed, noticed defendant and her female friend arrive at the store carrying big empty handbags. The guard became distracted by a group of children, but when his attention returned to defendant and her friend, he noticed that their bags now contained items. Reed followed defendant and observed her place a number of caps in her bag. He also saw defendant's companion place several shirts in her bag. The two women then attempted to leave the store, and Reed and his partner, Keith Tobar, followed them and tried to stop them. Reed told the women that he was a security guard, and asked them to stop. When they continued, Reed detained defendant's companion. Tobar tried to apprehend defendant. Tobar testified that defendant pulled a pair of needle-nosed pliers from her pocket and told him to get away from her and that she was going to kill him. Tobar testified that defendant stabbed him five times with the pliers, hitting him in his left forearm as he was trying to shield himself. Tobar wrestled the pliers from defendant, and also managed to grab her bag and a set of keys. Defendant escaped to a nearby van and drove away. Hats taken from the store were found in the van following defendant's arrest.

Defendant argues that the trial court erred when it gave jury instructions on the charged crimes of robbery and assault. She maintains that the trial court's failure to instruct the jury that these crimes require specific intent constituted plain error that affected the outcome of her trial.

“A defendant may not waive objection to an issue before the trial court and then raise it as an error on appeal.” *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000). “Waiver is the intentional relinquishment or abandonment of a known right. It differs from forfeiture, which . . . [is] the failure to make the timely assertion of a right. One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error. Mere forfeiture, on the other hand, does not extinguish an ‘error.’” *Id.* at 215 (internal citations omitted). Affirmatively approving a jury instruction extinguishes any error. *Id.* at 216, citing *United States v Griffin*, 84 F3d 912, 923-924 (CA 7, 1996).

When the trial court finished reading the jury instructions in the instant case, the court asked whether the prosecution or defense had any objection to the instructions as delivered. Defense counsel replied, “No, your honor. I understand the Court’s ruling on 7.15<sup>1</sup> and agree with the instructions as given.” Thus, despite defendant’s characterization of this issue on appeal as forfeiture, under *Carter*, defense counsel affirmatively approved the jury instructions read by the trial court, which extinguishes any error and precludes review.

Moreover, even if we were to conclude that defendant merely forfeited the issue, defendant cannot show that the trial court plainly erred. The trial court instructed the jury that the prosecutor had to show that defendant took the property “with the intent to take it away from the person permanently” in order to prove defendant guilty of robbery. As to AWGBH, the jury was instructed that the prosecutor was required to prove that “the defendant intended to cause great bodily harm.” These intent instructions were proper. See *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995); *People v Mitchell*, 149 Mich App 36, 38-39; 385 NW2d 717 (1986); CJI2d 17.7. Given that the trial court intent instructions were correct, the trial court’s failure to read a further instruction on specific intent was not reversible error. See *People v Maynor*, 470 Mich 289, 296; 683 NW2d 565 (2004); *People v Mitchell*, 61 Mich App 153, 163; 232 NW2d 340 (1975).

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot  
/s/ Douglas B. Shapiro

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<sup>1</sup> CJI2d 7.15 concerns the use of deadly force for self-defense. That instruction is not at issue in this appeal.